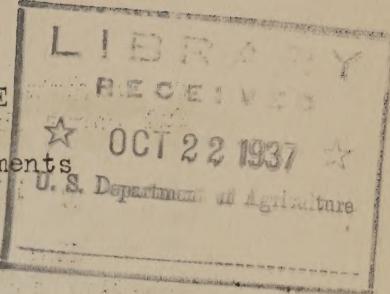


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Dairy Arbitrators*

UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Adjustment Administration
Division of Marketing and Marketing Agreements
Dairy Section



October 4, 1937

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INSTRUCTIONS TO ARBITRATORS DESIGNATED BY THE SECRETARY UNDER
SECTION 3 OF THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

The following instructions are issued by the Dairy Section and are designed to guide your activities as arbitrator in harmony with administrative policy and with a view to expediting the performance of this function in every way possible. These instructions are supplementary to the regulations issued by the Secretary of Agriculture governing mediation and arbitration.

1. Coordination where more than one individual is designated to arbitrate

In cases where the Secretary designates three individuals to serve as arbitrators, each person will be informed as to who the other individuals are and the time and place of meeting for the first hearing. It is suggested that the designated arbitrators get together prior to the hearing and agree upon a chairman, who should be one of the individuals other than the arbitrator who is also a regular officer or employee of the Department of Agriculture. The chairman should act as general spokesman of the group in the calling and conduct of the hearing, although his selection should not be regarded as in any way derogating from the equal rights and duties of the other arbitrators. The chairman should be responsible for finding common agreement among the arbitrators on any disputed points of procedure that may arise and, in general, to coordinate the activities of the entire group throughout the proceeding, including the preparation and submission of the final award.

2. Unlawful trade practices and unfair methods of competition

The law provides that an award or an agreement shall not be approved if it permits any unfair trade practice or any unfair method of competition. Permission to engage in the common forms of unfair competition such as secret rebates, false statements or advertisements concerning commodities, unjust discriminations in price, and others, is not likely to be sought in an award or agreement, but care should be taken that no practice which is permitted in a particular case is

an unlawful trade practice or unfair method of competition. Doubtful cases should be referred directly to the Department of Agriculture.

3. Duties of arbitrator

The arbitrator should bear in mind that he is acting in a quasi-judicial capacity and should be governed by the rules of conduct which would be applicable to anyone in a similar position. He should avoid:

- (1) Sacrificing a fair decision or a just award in an effort to find a compromise. His duty is not to seek a compromise but to reach a fair decision and to make a just award. This should not preclude efforts to find a solution acceptable to all parties.
- (2) Acting as an agent or advocate for either party. His duty is not to argue or to defend the case, but to hear it and decide it according to his best understanding.
- (3) Delegating his duties or authority to others.
- (4) Appearing to have bias. The arbitrator should not express opinions or views concerning the parties or the controversy before or after the award is made.
- (5) Refusing to admit pertinent or material evidence; postponing hearings for insufficient reasons, or denying postponement for sufficient cause, or making any adjournments except in view of the regulations and desired time for the effective date of the award as indicated in the submission.
- (6) Indicating in any way that a decision has been reached before all evidence has been received and before the award is made.

4. Authority of arbitrator

The arbitrator should read and be thoroughly familiar with:

1. The submission. The arbitrator's powers are partially defined and limited by this instrument. He must therefore decide all questions submitted and refrain from considering any question not submitted.

2. The rules and regulations. Rules and regulations issued by the Secretary further define his powers and should be thoroughly known by him. Any questions as to their scope or meaning should be cleared up before holding the hearing.

5. Conduct of hearings

In addition to observation of the rules and regulations pertaining to the conduct of the hearing, the arbitrator should endeavor to aid in maintaining an atmosphere free from animosity. Parties and witnesses should be allowed to make their statements in their own way without too frequent interruptions. The arbitrator should so conduct the hearing as not to prejudice the interests of either party. While the regulations provide that the expense of the record is to be borne by the parties to the dispute, the arbitrator should exercise his discretion in endeavoring to keep irrelevant material out of the record which would needlessly increase its bulk and expense. The arbitrator should remember to present his designation as arbitrator, to be incorporated as part of the record. He

should verify the submission in order to have a complete understanding of the issues involved. As a rule, the complaining party should be heard first, then the dissenting party. The arbitrator should permit the parties or their representatives to question each other and then should examine the parties or witnesses himself if he so desires. The rule should be rigidly adhered to that such questions be directed through the arbitrator or chairman. The arbitrator is expected to apply his knowledge and skill in bringing out facts at the hearing, sifting the evidence, and in determining the weight to be attached to any facts or information submitted. Effort should be made to avoid unnecessary delay.

6. Preparation of the award

The arbitrator is cautioned to (1) decline to admit evidence which is clearly immaterial and irrelevant and the introduction of which would delay the proceedings; (2) carefully avoid making an award which (a) contemplates further hearing, (b) is conditional upon some future act, (c) permits of alternate means of performance, or (d) reserves to the arbitrator further power; (3) avoid making an award which is not in accordance with the submission and regulations issued by the Secretary of Agriculture or which does not contain a decision on every question submitted. Time limitations, if any, contained in the submission and the regulations should be carefully observed. The award should be certain and definite and should not refer to outside materials without which it would be incomplete.

7. Possible factors which may make an award ineffective

It must be borne in mind that the binding effect of the award may be impaired by (1) corruption on the part of the arbitrator, (2) fraud, (3) evident partiality in the conduct of the hearing or investigation, (4) exceeding authority granted the arbitrator, (5) refusal to postpone the hearing if sufficient cause is shown, (6) refusal to hear evidence which is pertinent or material to the dispute, (7) misconduct of any kind which prejudices the right of the parties, and (8) imperfect execution of his powers in making a final and definite award.

8. Statement of reasons to accompany the award

While the award itself is not to contain a statement of the reasons for the arbitrator's decision, the arbitrator or arbitrators shall file with the Secretary such a statement and, in case of an award concurred in only by the majority of the arbitrators, the minority arbitrator shall file with the Secretary a dissenting statement setting forth his views and giving reasons for his dissent.

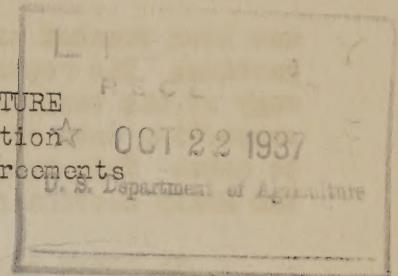
9. General instructions

All necessary instructions concerning Government procedure in traveling, submitting expense accounts, and other similar matters will be given by the Dairy Section at the time of designation. Those not familiar with Government procedure in such matters should make sure that they are fully instructed.

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UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Adjustment Administration
Division of Marketing and Marketing Agreements
Dairy Section



October 4, 1937

INSTRUCTIONS TO MEDIATORS DESIGNATED BY THE SECRETARY UNDER
SECTION 3 OF THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

The following instructions are issued by the Dairy Section and are designed to guide your activities as mediator in harmony with administrative policy and with a view to expediting the performance of this function in every way possible. These instructions are supplementary to the regulations issued by the Secretary of Agriculture governing mediation and arbitration.

1. Designation and assignment

Your designation as a mediator is made by the Secretary. This designation is your official authorization to act in that capacity, and should be retained by you to be available for exhibit to disputing parties whenever necessary.

Your assignment to a particular dispute will be made or confirmed in writing by the Chief of the Dairy Section, and will remain effective until your final report to the Dairy Section or to the Secretary, as the case may be, or you are relieved of responsibility in a particular dispute by the Chief of the Dairy Section.

2. Reports

Reports on the progress of negotiations should be made with respect to each assignment individually as frequently as developments and your time as mediator permit, but in no case less than one report each week. Mediation reports should not be combined with regular field reports on markets under your supervision. Such reports should contain an account of negotiations in progress, problems which have arisen, contemplated moves, and should be accompanied by copies of all communications to, and a summary of the contents of communications from, any of the parties or their representatives.

In cases where an agreement is reached a final summary report to the Secretary, in addition to the periodical reports to the Dairy Section, is to be prepared as soon as possible after an agreement

has been reached or tentatively approved in writing by the disputing parties. The report to the Secretary should be accompanied by a copy of the tentatively approved or actual agreement, together with supporting data as outlined below and any recommendations you wish to make. This report to the Secretary will be transmitted through the Dairy Section and countersigned by the Chief of the Dairy Section.

In cases where mediation services do not result in an agreement to be approved by the Secretary, a final report should be made to the Chief of the Dairy Section, describing the results of your efforts as a mediator and submitting any recommendations you deem desirable.

3. Proof to support the agreement

The final summary report to the Secretary should be accompanied by a statement of the facts considered by the parties formerly in dispute, sufficient to justify the provisions of the agreement submitted for the approval of the Secretary. If some survey of the market, in addition to that which you are able to make personally, is thought necessary, the matter should be taken up with the Chief of the Dairy Section during the course of negotiations.

4. Unlawful trade practices and unfair methods of competition

The law provides that an award or an agreement shall not be approved if it permits any unfair trade practice or any unfair method of competition. Permission to engage in the common forms of unfair competition, such as secret rebates, false statements or advertisements concerning commodities, unjust discriminations in price, and others, is not likely to be sought in an award or agreement, but care should be taken that no practice which is permitted in a particular case is an unlawful trade practice or unfair method of competition. Doubtful cases should be referred directly to the Department of Agriculture. ~~Sign and countersigned by the Chief of the Dairy Section.~~

5. General policy

~~In cases where mediation services do not result in an agreement to be approved by the Secretary, a final report should be made to the Chief. Matters of general policy and such problems as may be anticipated on the basis of the application will be covered in a conference or special instruction, as the particular case may require. It should be made clear to the disputing parties that (a) mediation is not intended to replace either marketing agreements or orders and the Department will not favor mediation where either marketing agreements or orders appear to be the appropriate methods; (b) that the Federal Government will not undertake to give legal advice but that the counsel retained by the disputing parties must be relied upon for such advice; (c) that the parties themselves assume full responsibility in entering into the agreement; and (d) that secretarial approval results in immunity only from the Federal antitrust laws and not from similar laws of the States.~~

6. Cooperation with State authorities

~~The law provides that an award or an agreement shall not be approved by the Secretary if it permits any unfair trade practice or any unfair method of competition. With respect to any dispute arising in a market or between parties over which State authorities have, or may under existing legislation~~

exercise, any regulatory control reaching the matters in dispute, the mediator should contact such authorities, acquaint them with the dispute and our willingness to assist in its settlement and indicate our desire that any mediatory efforts be exerted with their full cooperation and participation. Where specially constituted milk control boards, commissions, or officers under milk control legislation, do not exist, it is desirable to contact such other officials as may have an official interest or responsibility in such matters and whose cooperation might assist in handling the dispute. It is deemed important that our efforts do not operate at cross-purposes to those of the States, particularly where special milk control acts are in effect. The Dairy Section should be kept fully informed on all matters arising out of contacts with State officials.

7. Termination of assignment

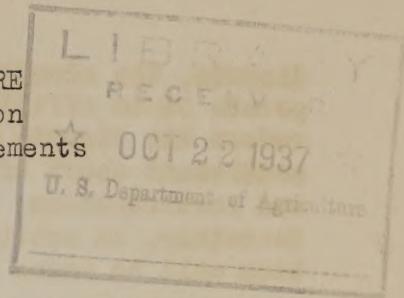
Your responsibility as a mediator in any dispute to which you have been assigned will, in any case, terminate with the submission of the final report to the Dairy Section or to the Secretary. Follow-up consultations may be authorized from time to time along with other administrative instructions.

8. Notification to parties of approval by the Secretary

The Dairy Section will be responsible for notification to the parties of approval by the Secretary of an agreement which has been submitted.

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UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Adjustment Administration
Division of Marketing and Marketing Agreements
Dairy Section



October 4, 1937

INSTRUCTIONS TO THE REPRESENTATIVE OF THE DAIRY SECTION
SENT TO MAKE PRELIMINARY CONTACTS WITH PARTIES WHO HAVE
SUBMITTED AN APPLICATION FOR ARBITRATION

The following instructions are issued by the Dairy Section and are designed to guide your activities as representative in making preliminary contacts with applicants for arbitration, in harmony with administrative policy and with a view to expediting the administration of section 3 of the Agricultural Marketing Agreement Act of 1937 in every way possible. These instructions are supplementary to the regulations issued by the Secretary of Agriculture governing mediation and arbitration.

In addition to any general understandings had with officials of the Dairy Section as to the nature of your task in making preliminary contacts with parties who have applied for arbitration, the following matters should be taken care of in all cases.

1. Reducing disputes to clear issues susceptible of arbitration

This involves a painstaking and rapid study of the situation with a view to assisting the parties to see what, if any, readjustments may be made by them to remove some, or even all points in dispute, or to explore the nature of the dispute with them to see clearly what is actually involved. Much latitude for constructive counsel to the industry is given and expected in harmony with the general policies of the Dairy Section. Arbitration as provided in the act is not intended to replace either marketing agreements or orders and the Department will not favor arbitration where either marketing agreements or orders appear to be the appropriate methods of government assistance. It is your duty to make sure that the disputing parties clearly understand this policy.

2. Cooperation with State authorities

With respect to any dispute arising in a market between parties over which State authorities have, or may under existing legislation exercise regulatory control reaching the matters in

dispute, the advance representative should indicate to the appropriate State officials our desire that preliminary efforts to reduce the dispute to clear-cut issues or to point the way to a settlement short of arbitration, be made with their full cooperation and participation. If and when a formal submission is made to the Secretary, an arbitrator designated and hearing begun, the arbitration will be under Federal supervision.

Where specially constituted milk control boards, commissions or other officers under milk control acts, do not exist, it is desirable that the advance representative contact such other officials as may have an official interest or responsibility in such matters and whose cooperation might assist in this preliminary contact with the parties. It is deemed important that our efforts in arbitration do not operate at cross-purposes to those of the States, particularly where special milk control acts are in effect. The Dairy Section should be kept fully informed on all matters arising out of contacts with State officials.

3. Transcript of record

It is desirable that you emphasize the necessity of securing a highly capable reporter who has had experience in that type of work, in order that there may be no undue delay, needless repetition, or other hindrances to the conduct of the hearing.

4. Selection of arbitrators

After preliminary investigation of a dispute and reports to the Dairy Section, you will be informed as to the number of individuals the Government proposes to designate to arbitrate the dispute. This will depend largely upon the size and complexity of the task and the extent of interests involved. Where only one individual is to be designated you are to inform the parties that it will be our general policy to designate someone outside the regular ranks of the Department and to employ him for that particular job. Where more than one individual is to be designated, in all probability three, at least two will be secured from outside the permanent staff and the third may or may not be selected from the regular staff, as the particular circumstances may, in the judgment of the Secretary, require. As a general rule it is expected that the third individual arbitrator will be one of the permanent employees or officials of the Department. You will be furnished with the names of those permanently employed individuals for the consideration of the parties in order to secure from them an expression of preference and approval.

It will be your duty to ascertain the choice of the disputants from the list of permanently employed officials, if such an officer is to be one of the arbitrators, and the names of as many other persons as are to serve, who are acceptable to the disputants. You will be furnished with a list of men who, from what information has been secured, appear to be capable and would be acceptable to the Secretary if approved by the parties requesting arbitration. Selec-

tions need not be confined to this list. Whenever any other person is suggested by the parties as being acceptable, the Dairy Section should be provided with an ample description of his qualifications and present connections. You will be notified by the Dairy Section if there is any objection to the appointment of any such persons.

5. Drafting the submission

Your chief responsibility in this connection is to:

(a) Communicate to the disputing parties the names of the persons previously approved, whom the Secretary proposes to employ and designate to be included in the submission.

(b) Advise them on any questions growing out of the provisions of the regulations.

(c) Assist, if requested, in the preparation of the submission to secure clarity in presenting the dispute and to suggest the necessity of having their own legal counsel wherever legal advice may be necessary.

